U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: DALLAS Date: MAY 22 2008

MSC 02 169 63250

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. In addition, the director noted that the applicant's absence from the country from December 31, 1987 to February 15, 1988 constituted a break in the applicant's continuous unlawful residence.

On appeal, counsel asserts that the applicant submitted credible evidence to demonstrate his presence and eligibility. Counsel contends that the applicant is requesting additional records of his employment during the requisite period and will forward them to the AAO once received.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the affidavits for class membership, which he signed under penalty of perjury on September 24, 1990 and June 5, 1993, the applicant stated that he first entered the United States in December 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant claimed to live at the following addresses in Dallas, Texas during the requisite period:

December 1981 to December 1983
January 1984 to Present: [redacted]

In addition, in Section 36 of Form I-687, the applicant claimed to work for doing landscaping work from December 1981 to the present.

AAO concurs with the director's finding that the applicant submitted insufficient evidence to establish continuous residence in the United States from before January 1, 1982 through May 4, 1988. In an attempt to establish continuous unlawful residence during the requisite period, the applicant furnished the following evidence:

(1) Letter dated September 23, 1990 by [redacted], claiming that he has known the applicant since 1981. Mr. [redacted] claims that he met the applicant while they worked together at Blalock Gardens Landscape Company. He further claims that he is now a self-employed landscaper and that the applicant occasionally "helps him out."

(2) Affidavit dated February 17, 2002 by [redacted] claiming that he has known the applicant since May of 1986. He claims that they worked together and have been friends ever since.

(3) **Second letter dated July 1, 1993 by** [redacted] claiming that the applicant worked with him from December 1981 to June 1984 as a laborer for Blalock Gardens. Mr. [redacted] further claims that the applicant is currently employed by his company, Gary's Landscaping, doing landscape installation, bed preparation, landscape clean-ups and tree/shrub trimming.

(4) Affidavit dated July 24, 2001 by [redacted] claiming that she has known the applicant since 1982. She claims that the applicant resided with her at [redacted], from January 1984 until December 1990.

(5) Second affidavit dated July 29, 2001 by [redacted], claiming that he has known the applicant since 1986 when they worked together at Sprinkler Specialist, located at that time in Garland, Texas.

(6) Third affidavit **dated September 20, 1990 by** [redacted] claiming to have knowledge that the applicant resided at [redacted] from December 1981 to December 1983, and [redacted], from January 1984 to the present. The

affiant further claims that he went to school with the applicant in Mexico and that they lived together at [redacted] from December 1981 to December 1983.

(7) Undated letter fro of The Sprinkler Specialists, claiming that the applicant was employed by the company as a sprinkler specialist from 1986 to 1988.

(8) Affidavit dated September 20, 1990 by [redacted], claiming that he has personal knowledge that the applicant resided at [redacted] from December 1981 to December 1983, and [redacted] from January 1984 to the present. He further claims that the applicant is a friend and roommate, and that their families are close friends. He claims that he knows for a fact that the applicant has been in the United States since before 1982.

In the Notice of Intent to Deny (NOID), dated September 26, 2003, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director also noted that the applicant's absence from the United States from December 31, 1987 to February 15, 1988 further rendered him ineligible because it interrupted his continuous unlawful residence and continuous physical presence during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated August 10, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

The first issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

The applicant submitted five affidavits, three of which appear to be executed by the same person. There are three affidavits by a [redacted]: two of which are executed by [redacted] and one which is executed by [redacted]. Regardless, all three affidavits provide minimal information, and the earliest affidavit, if in fact executed by the same person, provides information which directly contradicts the information contained in the subsequent affidavits. Specifically, in [redacted] affidavits dated July 29, 2001 and February 17, 2002, he claims that he has known the applicant since May 1986 and that they worked together. In his affidavit dated July 29, 2001, he specifically claims that they worked together at Sprinkler Specialists. However, in the earlier affidavit of [redacted] dated September 20, 1990, the affiant claimed to have knowledge that the applicant resided at [redacted] from December 1981 to December 1983, and [redacted] from January 1984 to the present. He further claims that he went to school with the applicant in Mexico and that they lived together at [redacted] from December 1981 to December 1983. This directly contradicts the claim in the later affidavits, in which [redacted] claims that he has only known the applicant since May 1986. It should be noted that while the affidavit of September 20, 1990 omits his first name of "[redacted]," [redacted] identifies himself as a sprinkler specialist, the same position he claims to have occupied when working with the applicant in 1986 for a company with the same name.

It is unclear whether [redacted] and [redacted] are the same person. If so, there are significant contradictions in the three affidavits contained in the record. It is incumbent upon

the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition to these three affidavits, the record contains affidavits by and [redacted]. Both of the affiants claim to have personal knowledge of the applicant's addresses in the United States since December 1981. [redacted] claims that the applicant resided with her from December 1981 to December 1983, but provides no independent evidence, such as lease agreements, copies of cancelled checks for rent paid to her, or utility bills showing the applicant in fact resided at the claimed address. Furthermore, [redacted] claims that his family and the applicant have been friends and that he sees the applicant almost every day, yet he fails to provide additional details such as how he can attest to the applicant's residences during this period.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient evidence of residence in the United States during the duration of the requisite period to corroborate these claims. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. Although [redacted] claims to see the applicant "almost everyday," no additional details regarding the nature of their contact is provided. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

In addition, the applicant submits several letters in support of his claimed employment during the requisite period.[1] The applicant submits two letters from [redacted], who claims to have been his co-worker and his employer during the requisite period. The statements provided by [redacted], who claims to have worked with the applicant for Blalock Gardens Landscape Company in his September 23, 1990 letter, corroborate the applicant's claims of employment on his Form I-687. However, there is no employment letter from Blalock Gardens verifying the applicant's alleged employment there during the early part of the requisite period. In addition, [redacted]s letter July 1, 1993 further fails to conform to the regulatory guidelines for employment letters.

None of the affiants provided the applicant's address(es) at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to declare whether the information was taken from company records or identify the location of such company records and state

[1] It is noted that on Form I-290B, counsel indicates that additional employment letters would be forwarded to the AAO once received. To date the AAO has received no further documentation, and it is further noted that counsel for the applicant did not request additional time to submit evidence on appeal. Therefore, the record as it currently stands will be considered complete for purposes of this appeal.

whether such records are accessible or in the alternative state the reason why such records are unavailable. In fact, it appears that the letters were not written or provided by the actual employer. The applicant's inability to obtain authentic letters of employment seriously detracts from the credibility of his claim of continuous unlawful residence during the requisite period.

Finally, the letter from Sprinkler Specialists raises questions regarding the applicant's claims. The applicant never claimed to work for this company, yet the letter of employment submitted claims he worked for the company from 1986 to 1988. This information directly contradicts the applicant's employment history as listed on his Form I-687. As previously stated, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.* at 591.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

The second issue raised by the director is whether the applicant's absence from the country from December 31, 1987 to February 15, 1988 constitutes a disruption in his continuous unlawful residence and physical presence. According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency. Therefore, if the applicant's statement in his June 7, 1993 interview is in fact true, he would have been absent from the United States for a period ranging from 46 to 48 days, thereby exceeding the 45 day limit for a single absence. Since there is insufficient evidence to disprove the applicant's claim in the interview, and no documentary evidence to corroborate the claim on Form I-687, the AAO must conclude, for this additional reason, that continuous residency during the requisite period has not been established.

Therefore, based on the above, the applicant has failed to establish continuous unlawful residence from before January 1, 1982 through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.